

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service) Application No. NUSF-41
Commission, on its own motion, investigating)
whether to assess the Nebraska Universal)
Service Fund surcharge on broadband)
services.)

COMMENTS OF NICE-BCS

The Nebraska Independent Companies for Embedded-Based Cost Support (the "NICE-BCS") respectfully submits these comments in connection with the Nebraska Public Service Commission's (the "Commission") December 14, 2004, Order Opening Docket and Setting Public Hearing (the "Order"). In the Order, the Commission sought comments regarding the Commission's proposal to assess the Nebraska Universal Service Fund ("NUSF") surcharge on the telecommunications component of a broadband connection.

NICE-BCS consists of the following rural independent local exchange carriers ("LEC"): Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Curtis Telephone Company, Diller Telephone Company, Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., Keystone-Arthur Telephone Company, Mainstay Communications, Plainview Telephone Company, Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company. NICE-BCS appreciates the opportunity to participate in this docket and is willing to work with the Commission and other parties to look into the various possibilities of resolving issues related to the preservation of the NUSF.

NICE-BCS respectfully submits the following comments in response to the Commission's Order:

NICE-BCS supports and applauds the Commission's efforts to preserve and protect universal service in Nebraska, and NICE-BCS generally supports the proposal of the Commission and Commission staff to assess the NUSF surcharge on the telecommunications component of broadband connections. Along with its support for such proposal, NICE-BCS urges the Commission to place a high importance on issues of competitive neutrality when crafting the specific aspects of the new funding mechanism.

The assessment of the NUSF surcharge on broadband will help to ensure that the NUSF will survive the current wave of new technology in telephony. Without a change to the current funding mechanism, the potential exists for a rapid depletion of the fund, which in turn could jeopardize universal service in Nebraska. As more and more consumers move from traditional circuit switched telephone service to VoIP service provided over broadband connections, the current base of NUSF contributors will continue to decline unless a change is made to the funding mechanism. The assessment of the NUSF surcharge on broadband will spread support obligations across a greater number of contributors, and such change will help ensure the long-term sufficiency of the fund.

The Commission has the responsibility and authority to ensure that a shift in technology does not adversely affect the accessibility of telecommunications services in traditionally high cost areas. The Nebraska Telecommunications Universal Service Fund Act (the "Act") authorizes the Commission "to establish a funding mechanism which . . . ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices."¹ Furthermore, the Act mandates that the NUSF "provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with

¹NEB.REV.STAT. § 86-317.

the policies set forth in the [Act].”²

In addition to being within the power and authority of the Commission to preserve and protect universal service in Nebraska, the assessment of the NUSF surcharge on the telecommunications component of broadband is lawful. Pursuant to the Act, the Commission “[s]hall require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law.”³ The Act defines “telecommunications company” as “any natural person, firm, partnership, limited liability company, corporation, or association offering *telecommunications service for hire* in Nebraska intrastate commerce without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the commission.”⁴ Case law establishes that there is a telecommunications component to broadband,⁵ and therefore, broadband providers offer telecommunications services. Thus, the assessment of the NUSF surcharge on the telecommunications component of a broadband connection is lawful and within the power of the Commission pursuant to the Act.

NICE-BCS acknowledges the difficult responsibility the Commission has undertaken to create and maintain a specific, predictable, sufficient, and competitively neutral mechanism to preserve and advance universal service,⁶ and NICE-BCS greatly appreciates the Commissions efforts in doing so. NICE-BCS is committed to work with the Commission and the industry to reach a fair

²NEB.REV.STAT. § 86-324.

³NEB.REV.STAT. § 86-324(2)(d).

⁴(Emphasis supplied) NEB.REV.STAT. § 86-322.

⁵See *Brand X Internet Services v. Federal Communications Commission*, 345 F.3d 1120 (9th Cir. 2003); *AT&T Corporation v. City of Portland*, 216 F.3d 871 (9th Cir. 2000).

⁶NEB.REV.STAT. § 86-323(5).

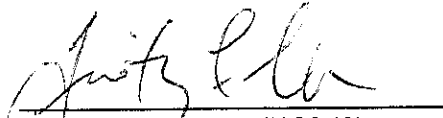
and equitable solution to the existing threat to universal service in Nebraska.

Dated this 9th day of February, 2005.

NEBRASKA INDEPENDENT COMPANIES FOR
EMBEDDED-BASED COST SUPPORT
("NICE-BCS")

Arapahoe Telephone Company d/b/a ATC
Communications,
Benkelman Telephone Company, Inc.,
Cozad Telephone Company,
Curtis Telephone Company,
Diller Telephone Company,
Glenwood Telephone Membership Corporation,
Hartman Telephone Exchanges, Inc.,
Keystone-Arthur Telephone Company,
Mainstay Communications,
Plainview Telephone Company,
Wauneta Telephone Company, and
WesTel Systems f/k/a Hooper Telephone Company.

By:



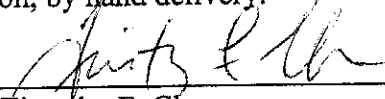
Timothy F. Clare (#19970)

Troy S. Kirk (#22589)

REMBOLT, LUDTKE & BERGER, LLP
1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
(402) 475-5100

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2005, the original and five (5) paper copies together with an electronic copy of the foregoing Comments were served upon Andy S. Pollock, Executive Director of the Commission, by hand delivery.



Timothy F. Clare

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